IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O. O. C. J.

WRIT PETITION NO.2012 OF 2006

St. Thomas Academy ..Petitioner.

Vs.

Tek Bahadur Thapa & Ors. ..Respondents.

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Mr. S.C. Naidu with Mr. Manoj Gujar i/b M/s. C.R. Naidu & Co. for the Petitioner.
Mr. Vinod Shetty for Respondent No.1.
Ms. Meloni D'Souza for Respondent No.2.

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CORAM: DR. D.Y. CHANDRACHUD, J.

7th August, 2006.

P.C. :

1. Rule. By consent of the learned counsel and at their request heard forthwith.

2. The First Respondent filed a complaint of unfair labour practices under items 1 (a), (b) and (d) of Schedule IV to the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971. The First Respondent stated in paragraph 3(a) of the complaint that he was working with the Second Respondent herein viz. The Church of Our Lady of Rosary

(which is impleaded as the First Respondent to the complaint). The letter of appointment was issued by the Second Respondent to the First Respondent. Paragraph 3(a) of the complaint also contains an averment that there is an indisputable employer-employee relationship between the complainant and the Second Respondent herein. On the basis of these averments, an application was filed before the Labour Court by the Petitioner herein questioning the maintainability of the complaint as against the Petitioner in the absence of an employer employee relationship. The application was dismissed by an order dated 5th October, 2004 which was confirmed in revision by the Industrial Court.

3. Now it is a settled principle of law that unless the relationship of employer and employee is undisputed or is indisputable, the Labour Court would have no jurisdiction to entertain a complaint under the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971. The exercise of jurisdiction under the Act by the Labour Court is premised on the foundation of the existence of such a relationship. In the present case, the First Respondent who is the original

complainant has accepted that he is the employee of the Second Respondent herein; that his wages have been paid by the Second Respondent, the Church of Our Lady of Rosary. In view of the judgment of the Supreme Court in **Cipla Ltd. v. Maharashtra General Kamgar Union**[1], the complaint as against the Petitioner herein is not maintainable. It may be as a matter of fact that both the Church and the school are located in the same compound and that therefore the First Respondent was required by the order of appointment to attend to the security of the Church as well as the school premises. That, however, would not alter the position in regard to the existence of an employer employee relationship which in the present case subsists as between the First Respondent and the Second Respondent. Counsel appearing for the First Respondent has submitted that the Third Respondent who is the Parish Priest of the Church also acts as a manager of the primary school which is controlled by the Church. The order of termination in the present case was issued on the letter head of the Church, though it has been signed by the Third Respondent for both the Church as well as the School. A complaint under the Maharashtra Recognition of Trade Unions and Prevention of

1 2001 1CLR754.

Unfair Labour Practices Act, 1971 can lie only as between the employer and his employee. The First Respondent is the employee of the Second Respondent and that is the pleading in the complaint. In these circumstances, the impugned judgment and order of the Industrial Court in so far as it confirmed the order of the Labour Court is quashed and set aside. The complaint shall accordingly stand dismissed as not being maintainable as against the Petitioner. Rule is accordingly made absolute in terms of prayer clauses (a) and (b).